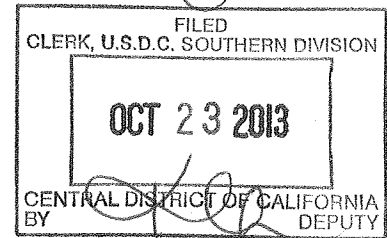


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
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DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES BRAMMER,

Petitioner,

vs.

AMY MILLER, Warden,

Respondent.

Case No. CV 13-7368-MWF (RNB)

ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS WITHOUT PREJUDICE

On October 4, 2013, petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody herein. The Petition purports to challenge a conviction sustained in Los Angeles County Superior Court on November 9, 2013, for which petitioner was sentenced to an indeterminate term of 25 years to life on February 27, 2013.

As best the Court can glean from the Petition, petitioner is claiming that (1) his constitutional right to a speedy trial was violated, (2) his right to due process was violated by the actions of the prosecutor and the judge at the hearing on petitioner's suppression motion, (3) a prior "strike" conviction was null and void, (4) the trial court violated petitioner's right to a fair trial when it refused to honor a challenge made pursuant to Cal. Code Civ. Proc. § 170.6, (5) the prosecutor engaged in misconduct by destroying and/or withholding exculpatory evidence and knowingly

1 presenting the detectives' false testimony, and (6) the trial court committed numerous
2 errors that violated petitioner's rights to due process and a fair trial, and to present a
3 defense.

4 It appears from the Petition that at least some of these claims may have been
5 raised in pre-judgment applications for relief that petitioner filed in the California
6 Court of Appeal and California Supreme Court, each of which was denied. However,
7 according to the Petition, petitioner's direct appeal still is pending and no opening
8 brief has been filed to date.

9 As a general proposition, a federal court will not intervene in a pending state
10 criminal proceeding absent extraordinary circumstances where the danger of
11 irreparable harm is both great and immediate. See Younger v. Harris, 401 U.S. 37,
12 45-46, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971); see also Fort Belknap Indian
13 Community v. Mazurek, 43 F.3d 428, 431 (9th Cir. 1994) (abstention appropriate if
14 ongoing state judicial proceedings implicate important state interests and offer
15 adequate opportunity to litigate federal constitutional issues), cert. denied, 516 U.S.
16 806 (1995). "[O]nly in the most unusual circumstances is a defendant entitled to have
17 federal interposition by way of injunction or habeas corpus until after the jury comes
18 in, judgment has been appealed from and the case concluded in the state courts."
19 Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972); see also Carden v. Montana, 626
20 F.2d 82, 83-84 (9th Cir.), cert. denied, 449 U.S. 1014 (1980).

21 Younger abstention is appropriate in favor of a state proceeding if three criteria
22 are met: (1) the state proceedings are ongoing; (2) the proceedings implicate
23 important state interests; and (3) the state proceedings provide an adequate
24 opportunity to litigate the plaintiff's federal constitutional claims. See Middlesex
25 County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432, 102 S. Ct. 2515,
26 73 L. Ed. 2d 116 (1982); Kenneally v. Lungren, 967 F.2d 329, 331-32 (9th Cir. 1992),
27 cert. denied, 506 U.S. 1054 (1993); Partington v. Gedan, 880 F.2d 116, 121 (9th Cir.
28 1989), cert. denied, 497 U.S. 1038 (1990).

1 Here, the Court finds that all three criteria for Younger abstention are met by
2 petitioner's pending direct appeal. Moreover, the Court has concluded that dismissal
3 of the Petition also is warranted under the Ninth Circuit's holding and reasoning in
4 Sherwood v. Tompkins, 716 F.2d 632 (9th Cir. 1983). In Sherwood, the petitioner
5 was seeking habeas relief on the ground that he had been denied his right to
6 appointed counsel and free transcripts. Although the petitioner's state appeal from
7 his conviction still was pending, the petitioner arguably had exhausted his state
8 remedies with respect to the particular claim being raised in his federal habeas
9 petition. The Ninth Circuit held that the federal habeas petition nevertheless had to
10 be dismissed for failure to exhaust state remedies:

11 "[E]ven were Sherwood to have exhausted all his state remedies
12 with respect to the denial of his appointed counsel and free transcript
13 request, that would not be enough to satisfy the requirements of 28
14 U.S.C. §§ 2254(b) and (c). When, as in the present case, an appeal of a
15 state criminal conviction is pending, a would-be habeas corpus
16 petitioner must await the outcome of his appeal before his state remedies
17 are exhausted, even where the issue to be challenged in the writ of
18 habeas corpus has been finally settled in the state courts.

19 "As we explained in Davidson v. Klinger, 411 F.2d 746, 747 (9th
20 Cir. 1969), even if the federal constitutional question raised by the
21 habeas corpus petitioner cannot be resolved in a pending state appeal,
22 that appeal may result in the reversal of the petitioner's conviction on
23 some other ground, thereby mooting the federal question." Id. at 634
24 (footnote and remaining citations omitted).


25
26 It therefore appears to the Court that the exhaustion requirement has not been
27 satisfied here. See Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972) ("[O]nly in
28 the most unusual circumstances is a defendant entitled to have federal interposition

1 by way of injunction or habeas corpus until after the jury comes in, judgment has
2 been appealed from and the case concluded in the state courts.”); Murphy v. Wilson,
3 409 F.2d 840 (9th Cir. 1969) (holding that the exhaustion requirement would not be
4 satisfied until the state appeal proceedings were completed and a final state judgment
5 had been entered); see also Deere v. Superior Court, 330 Fed. Appx. 693, 694 (9th
6 Cir. 2009) (citing Sherwood for proposition that “a federal habeas petition is
7 premature when the petitioner’s direct appeal is pending in state court” and also
8 holding that granting habeas relief before the petitioner proceeded with his direct
9 appeal would violate the dictates of Younger).


10 For the foregoing reasons, IT IS HEREBY ORDERED that this action be
11 summarily dismissed without prejudice pursuant to Rule 4 of the Rules Governing
12 Section 2254 Cases in the United States District Courts.

13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14
15 DATED: October 21, 2013

16
17 
18 MICHAEL W. FITZGERAUD
UNITED STATES DISTRICT JUDGE

19 Presented by:

20 
21 Robert N. Block
22 United States Magistrate Judge
23
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28